IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 9928 of 1994

Between:

1.M/s Anwar Brothers, Rep.by its Proprietor
Mohd.Moulana Hussain S/o.Mohammed Hussain
Business, 19-2-227/4, Bahadurpura, Hyderabad.
2.M/s Viquar Brothers, Rep.by its Proprietor
Mohd. Farooq Hussain S/o.Mohammed Hussain
Business, 19-2-227/4, Bahadurpura, Hyderabad.
3. Brothers Enterprises, Rep.by its Managing Partner
Mohd. Farooq Hussain S/o.Mohammed Hussain
Business, 20-6-361/1, Shah Alibanda, Hyderabad.

..... PETITIONERS

AND

Andhra Pradesh State Road Transport Corporation, Rep.by its Managing Director, Musheerabad, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus, or any other writ, order or direction, in the nature of a writ, directing the respondent to extend the time for clearing the balance material without penalty or alternatively to impose penalty at the bank rate of interest in respect of the Tenders accepted by the respondent and pass such other order.

Counsel for the Petitioners:MR.A.K.AHMED

Counsel for the Respondent : Mr.K.Harinath, Standing Counsel for APSRTC

The Court made the following :

ORDER:

The petitioners are businessmen dealing in scrap material. In the auction conducted by the respondent on 02.02.1994 for the sale of scrapped vehicles, they became successful bidders. As per the terms and conditions of auction binding on them, they are required to remove the scrapped material within a stipulated time. They did not do so. Therefore, the respondent imposed penalty of 18% for the first week, 24% for the third week, 36% for the fifth week and 48% for the seventh week over the balance amount to be paid for the scrap by the petitioners. The petitioners approached the respondent requesting waiver of the penalty or for reduction of the penalty, in vain. However, they were not permitted to lift the material without payment. Aggrieved by the same, they filed the present writ petition praying this Court to issue Writ of Mandamus directing the respondent to extend time for clearing the balance material without penalty or alternatively impose penalty at the Bank rate of interest.

The Senior Law Officer of the respondent-Corporation filed counter affidavit opposing the writ petition. It is stated that at the request made by the petitioners, time was extended for payment of the amount. They did not pay the amount within the extended time and therefore they were asked to pay the amount with penalty of 24%. As per the terms and conditions of auction for sale of unserviceable vehicles, the tenderer has to pay the ground rent at one per cent of the total value of the unserviceable vehicles and requires to pay the bid amount within seven days from delivery, and penalty can be imposed by the respondent at 18% per annum from eighth to fourteenth day, 24% for the period from fifteenth to twenty first day, 36% for the period from twenty second to thirty fifth day and 48% from thirty sixth day onwards. It is also stated that the petitioners have not filed any application for waiver of the ground rent. The Corporation has acted upon the terms and conditions and abandoned any of the conditions.

Though the counter affidavit is filed on 08.07.1994, the petitioners have not filed any reply denying the counter allegations. Be that as it is, the dual relationship between the petitioners and respondent is traceable to terms and conditions for auctioning unserviceable vehicles. These terms and conditions are binding on both the parties and therefore if either of the parties to the contract seeks to enforce, a writ petition is not a proper remedy. Further, I fail to see any arbitrariness or irrationality in imposing penalty.

The writ petition is devoid of merits and is accordingly dismissed.

16.06.2004

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad.
2. 2 CD copies.